IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 544/2003
(Rashid Ali Vs. Smt. Hamida and Ors.)

Date of Order : 25/07/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. S.L.Jain for the petitioner.
Mr. Yogesh Sharma for the non-petitioners.

BY THE COURT:-

By the instant criminal misc. petition under Section 482 Cr.P.C., the petitioner has challenged the order dated 9.6.2003 passed by Additional Sessions Judge No.1, Chittorgarh (for short 'the revisional court' hereinafter) in Criminal Revision No.11/2003, whereby the revisional court dismissed the revision petition filed by the petitioner against the order dated 10.1.2002 passed by Judicial Magistrate, Chittorgarh (for short 'the trial court' hereinafter), whereby the trial court allowed the application filed by the non-petitioners No. 1 to 6 under Section 125 Cr.P.C. and granted maintenance allowance at the rate of Rs. 500/- per month to each of the non-petitioners totalling to

Rs.3000/- per month till the non-petitioner Smt. Hamida remarriages and non-petitioners No.2 to 6 attain the majority. Aggrieved by the order impugned, the petitioner has filed the instant criminal misc. petition.

I have heard learned counsel for the parties and carefully gone through the orders of the revisional court as well as of the trial court as also the record of the trial court.

It is contended by the learned counsel for the petitioner that non-petitioner No.1 Smt. Hamida in her statement stated that she wanted to give Talak to the petitioner and therefore, she is not entitled for maintenance. It is further contended that the income of the petitioner as disclosed by the witnesses produced by the non-petitioners is not reliable. It is highly impossible for a person undertaking the work of denting and welding to earn Rs. 20,000/- to 22,000/- per month and lastly it is contended that both the courts below fell in error in relying on the statement of minor daughter of the petitioner AW-2 Shaheen Parveen with regard to the income of the petitioner as on the relevant date, the age of the witness was 17 years.

Counsel appearing for the non-petitioners supported the orders passed by the courts below.

I have given my thoughtful consideration to the rival submissions made by the counsel for the parties.

AW-1 Smt. Hamida, in her lengthy statement, has

categorically stated that her husband, the petitioner, used to give beating to her and she has been given threat by her husband of her life. She has also stated some instances when her husband gave beating to her in the presence of her children non-petitioners No. 2 to 6. She categorically stated that on one occasion in the year 1997, she was given beating by the petitioner and petitioner caught hold her neck and it was her children who saved her and had they been not rescued her, probably she would have been murdered. She has also stated that petitioner is having a welding shop at Hathipole, Chamanpura, wherefrom, he earns a sum of Rs. 20,000/- per month as also has his own house at Udaipur though she stated that she has not seen the shop but she being the wife of the petitioner has definite knowledge what her husband is doing.

AW-2 Shaheen Parveen, the daughter of the petitioner, also made a similar statement and stated that the petitioner is having a welding shop where he is manufacturing auto body.

The petitioner himself appeared as NAW-1 and admitted that he is undertaking the work of welding. In whole of his statement, he nowhere disclosed his income. Thus, the income as disclosed by the non-petitioners remained un-controverted. Both the courts below on sound and proper appreciation of the evidence granted maintenance in favour of

non-petitioners as noticed above. To maintain a person, a sum of Rs. 500/- per month in any manner cannot be said to be excessive amount. On the contrary, keeping in view the recent trend of market inflation, a sum of Rs.500/- per month to maintain an adult person is hardly an adequate amount. On close scrutiny of record and the orders passed by the courts below, it cannot be said that the orders impugned would result in serious miscarriage of justice. The petitioner being husband of the non-petitioner No.1 and father of non-petitioners No. 2 to 6 is obliged to maintain them. There is evidence that the petitioner despite having sufficient means has neglected and refused to maintain the non-petitioners.

In this view of the matter, I do not find any error, illegality or perversity in the orders impugned warranting interference in the inherent jurisdiction under Section 482 Cr.P.C.

The criminal misc. petition is therefore, dismissed. Stay petition also stands dismissed.

(H.R.PANWAR),J.

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